

WENDE CORRECTIONAL FACILITY
P.O. BOX 1187
AIDEN, NEW YORK 14004-1187

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HON. DAVID R. HUMER - U.S.M.J.

MARCH 11, 2002

NORTHERN FEDERAL DISTRICT COURT

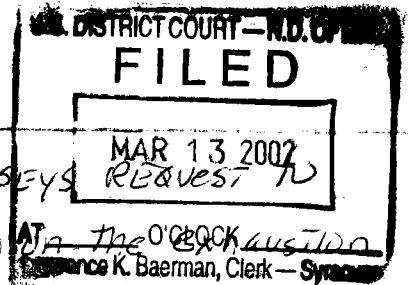
P.O. BOX 7367

100 SOUTH CLINTON STREET

SYRACUSE, NEW YORK 13261-7367

VINANTE V VANDYKE

99-CV-830 (DAH) (LEK)



DEAR JUSTICE HUMER, I IMMENSELY OPPOSE MR. KINSEY'S
PUT IN ANOTHER SUMMARY JUDGEMENT MOTION BASED AT THE O'BROCK AUCTION
ISSUE.

MR. KINSEY HAS NO LEGAL RECOURSE IN ANOTHER SUMMARY JUDGEMENT
AND THE COURT SHOULD NOT LET HIM RESOLVE THIS ISSUE IN THIS FORUM.

WILLIAM V JOLIET CORRECTIONAL MEDICAL UNIT. 2000 WL 152134 (N.D. ILL FEB 4, 2000)

ORANGE V STRAIN WL 158328 (E.D. LA FEB 10, 2000)

HOWARD V GOORD 1999 WL 1288679 AT*3 (S.D.N.Y. DEC 28, 1999)

DEFENDANTS HAS LOST THE RIGHT TO RAISE THE EXHAUSTION DEFENSE
BECAUSE PLAINTIFF DIDN'T REVOKE THEIR RIGHT TO DO SO.

MASSEY V HELMAN 196 F3d 727

THE DEFENDANTS HAD PLENTY OF OPPORTUNITY TO ADDRESS THIS ISSUE FOLLOWING
THE COMMENCEMENT OF THIS ACTION. THE DEFENDANTS HAVE OBTAINED A PARTIAL
SUMMARY JUDGEMENT, A CONFERENCE WAS HELD, ASSIGNMENT OF COUNSEL
ORDERED TO PROCEED TO TRIAL, NOW THE DEFENDANTS WANTS TO STOP PROCEDURES
TO ADDRESS AN ERROR OF OPPORTUNITY! THIS HONORABLE COURT SHOULD NOT PERMIT
IT. THIS HONORABLE COURT HAS THE OPTION TO WAIVE THE DEFENDANTS DEFENSE
OF EXHAUSTION BECAUSE THEY DELAYED TOO LONG IN RAISING THE ISSUE.

ORANGE V STRAIN 2000 WL 158328 (E.D. LA FEB 10, 2000)

WILLIAM V ILLINOIS DEPT OF CORRECTIONS 1999 WL 1068669 AT*3-4 (N.D. ILL 11/17/99)

THE FACTS OF THIS CASE DEMONSTRATE THAT THE PLAINTIFF HAD NO
REMEDIES TO EXHAUST.

that a prisoner whose grievance was time barred at the time of suit had no available remedy.

HATFIELD v. Hatlock 16 F Supp 2d 834 837 suggesting in dictum that Federal claims should not be barred because of prisoners' untimely filing of a grievance

Incident occurred on the night of 12-22-98 and went into the morning of 12-23-99. Plaintiff sustained severe injuries that incapacitated him physically, mentally and emotionally. Plaintiff was on medication and sustained ~~enhanced~~ back injuries compounded on a chronic back disorder, creating immobility. Plaintiff could not talk because his tongue was stuck together. Plaintiff was placed in the facility hospital, in an isolated room under protective custody status. Plaintiff on or about JAN 4, 1999 was moved to a special housing unit called the "box". On the morning of JAN 7, Plaintiff was transferred to Cayuga C.F.

In accordance with Directive 4040 Inmate Grievance Procedure, a grievance may be submitted 14 days after incident and there are no provisions for extensions of time to submit. From the date of incident to the date of transfer, was give or take 15 days. In accordance with this directive a grievance that occurs at another facility is moot, because you are no longer there for it to effect you. Plaintiff had no recourse in view of his extenuating circumstance.

GRAVES v. DE TELLA 1998 WL 196459 (MD. Ill 4-17-98) Refusing to dismiss where prisoner had tried and failed to exhaust and had then been transferred making remedy unavailable, as of time of suit.

MR KINSEY'S REQUEST should be denied because as demonstrated U.S.S.C. PORTER v. Nussle has no merit toward this action.

Thank you for your concern and consideration.

Respectfully,

CC ADA R KINSEY

DJV/FILE

Dean J Villante

State of New York – Department of Correctional Services

Wende Correctional Facility

INMATE RECORDS OFFICE

Memorandum

To: VILLANTE, Dean (92A3786) C 15/2
From: Dawn Phenes, Inmate Records Coordinator II *DP/WJ*
Date: 01/22/01
Re: Your Request

Downstate	5/6/92-6/20/92
Elmira	6/20/92-8/28/92
Wende	8/31/92-5/21/93
Attica	5/21/93-7/18/94
Shawangunk	7/19/94-2/16/95
Woodbourne	2/16/95-10/6/98
Oneida	10/7/98-11/25/98
Marcy	11/25/98-1/7/99
Cayuga	1/7/99-2/26/99
Collins	3/1/99-7/28/00
Wende	7/28/00-Present

ws

c: File